

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

|  |   |                      |
|--|---|----------------------|
| In the Matter of                         | ) |                      |
|  | ) |                      |
| Deployment of Wireline Services Offering | ) | CC Docket No. 98-147 |
| Advanced Telecommunications Capability   | ) |                      |
|  | ) |                      |
| And                                      | ) |                      |
|  | ) |                      |
| Implementation of the Local Competition  | ) | CC Docket No. 96-98  |
| Provisions of the                        | ) |                      |
| Telecommunications Act of 1996           | ) |                      |

REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.  
ON FURTHER NOTICES OF PROPOSED RULEMAKING

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## SUMMARY

In this docket, the Commission is seeking comment on how its line sharing rules can be or should be modified in order to take account of the development of next generation DLC loop technology and the deployment of remote DSLAMs used in the provision of broadband services.

In these reply comments Qwest makes two very brief but important points:

- Qwest's ability, and the ability of other ILECs, to implement an infrastructure which will support the best foundation for broadband services is being seriously hampered by the fact that the Commission still declines to impose any access regulations on the major provider of mass-market broadband services, namely cable modem services. It makes no sense to decline to regulate the marketplace's dominant player while at the same time imposing burdensome and often uneconomic regulations on the secondary service provider.
- NGDLC technology and other technology which can be used to support broadband services is still being developed, and there is every indication that various ILECs will deploy this technology in different manners. Establishment of rules by this Commission which would have the effect of directing the manner in which this technology should develop, or which would, through unbundling and pricing regulation, make investment in the technology economically unwise, would be counter to the public interest. The Commission should not impose additional rules concerning unbundling of broadband services or architecture.

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REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.  
ON FURTHER NOTICES OF PROPOSED RULEMAKING

Qwest Communications International Inc. (“Qwest”) hereby files its Reply Comments on the Further Notices of Proposed Rulemaking set forth in the above captioned proceedings.<sup>1</sup>

I. INTRODUCTION

The comments submitted in this proceeding demonstrate that the infrastructure necessary to the development of a robust and competitive broadband telecommunications marketplace has largely not yet been constructed, and there is generally no agreement on what technology will be deployed. In fact, it is unlikely that all carriers will deploy the same broadband technology or the same technology supporting broadband services. Accordingly, the Commission finds itself in the uncomfortable position of considering whether, and how, to regulate, direct and “unbundle” the development of new technology that is still largely unknown and under development. A false step could imperil the development and deployment of broadband services as well as next

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<sup>1</sup> In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26, rel. Jan. 19, 2001 (“Further Notices” or “Notices”).

generation loop technology altogether. It is imperative that the Commission not undertake new regulation of this technology, especially at this stage of its development.

These concerns have caused Qwest to approach this docket with caution. Qwest is in the position of being, simultaneously, a competitive local exchange carrier (“CLEC”) and an incumbent local exchange carrier (“ILEC”). As a CLEC, Qwest is constructing fiber ring infrastructures in 27 major metropolitan areas outside its ILEC territory. Qwest has already begun to offer high-speed data transmission and broadband Internet access services in many of these areas. Additionally, Qwest is rolling out Digital Subscriber Line (“DSL”) service in a number of markets using digital subscriber line access multiplexers (“DSLAM”) collocated at ILEC central offices and relying on ILEC-provided unbundled network element (“UNE”) loops to reach the customer. To be successful, Qwest needs to be able to obtain from ILECs efficient transport vehicles to enable Qwest to deliver services to end users. In this regard, Qwest often provides broadband services in situations where the customer continues to purchase voice service from the ILEC.

By contrast, as an ILEC in fourteen states, Qwest must determine the best means of broadly, rapidly and economically deploying broadband technology to end users themselves. In doing so, Qwest must consider the best interests of its retail and wholesale customers, as well as its shareholders. Fundamentally, CLECs wish to purchase components of these advanced technologies from Qwest (e.g., copper loops), and Qwest wishes to sell these components. Given the uncertainty of the development of the requisite wireline technology and given the state of a robust competitive market for the delivery of high-speed data services, the key issue is the appropriate role of government.

Qwest decidedly favors minimal governmental intrusion and, to the greatest extent possible, the unfettered development of technology to meet the demands of the marketplace. Concurrently, and correspondingly, Qwest urges competitive neutrality and restraint when approaching a widely acknowledged competitive market.

## II. AN ALTERNATIVE TO THE PROPOSED RULES

The current rules provide that the unbundling of Next Generation Digital Loop Carrier (“NGDLC”) architecture is not required unless four conditions are met -- the most significant of which is the requirement that, when an ILEC remotely deploys a DSLAM, it must either make collocation space available for competitors at the remote terminal (or “RT”) where the DSLAM is deployed, make conditioned copper loop plant available for competitive DSL providers, or provide unbundling of the remotely deployed DSLAM.<sup>2</sup> Qwest has adopted processes that enable CLECs to provide competitive service when it deploys remote DSLAMs.<sup>3</sup> Qwest also does not intend to retire copper plant when it deploys DLC-based loops, which will provide an alternative to CLECs which do not desire to deploy their own DSLAMs remotely.

Qwest is also attempting to develop wholesale products that are useful for CLECs desirous of providing broadband services to customers. As noted in our initial comments,

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<sup>2</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, 15 FCC Rcd. 3696, 3838-39 ¶ 313 (1999).

<sup>3</sup> Qwest has completed joint planning sessions with CLECs in order to permit Qwest to properly size cabinets where remote DSLAMs will be deployed. Unlike other ILECs, Qwest does not plan to deploy remote DSLAMs at its remote terminals. Instead Qwest’s plans are to deploy DSLAMs remotely at the feeder distribution interface (“FDI”), a place deeper in the network than is the RT. In the Qwest network, there are no cross-connect points at the RT. The cross-connect points exist at the FDIs. Qwest is expanding its FDIs and deploying a remote collocation product called “DA Hotel”. DA Hotel will accommodate its own and CLEC DSLAMs.

Qwest's own DSL services are non-dominant, facing an intense uphill struggle against the dominant cable modem services provided by such behemoths as AT&T Corp. ("AT&T"). Qwest is attempting to tailor its wholesale tariffed service DSL plan to better accommodate the needs of CLECs. Concededly, the purchase of tariffed services from Qwest will not give CLECs the control over the Qwest facilities which they have requested in their initial comments,<sup>4</sup> but the Qwest network is really not capable of granting a greater degree of control in any event. This is because the Qwest asynchronous transfer mode ("ATM") network utilizes switches that do not have the capability to provide network-to-network interfaces. Thus, most of the unbundled loop elements requested by CLECs in their initial comments are not feasible in the Qwest ATM network. As a result, from Qwest's perspective as an ILEC, the best current solution is to work to tailor its wholesale tariffed offerings to the needs of CLECs. As technology develops, Qwest will continue to work with CLECs on exploring other types of wholesale offerings -- including those that can give CLECs the ability to differentiate and control their service offerings. Qwest is confident that it will be able to work out business relationships and wholesale offerings with CLECs within its region. Qwest has already developed a number of products that are responsive to CLEC data needs. These include, e.g., space in remote terminals placed at the FDI,<sup>5</sup> unbundled packet switching, remote collocation at any technically feasible point and resale at a discount of the retail Qwest DSL offering.

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<sup>4</sup> See Joint Comments of Covad Communications Company, Rhythms NetConnections Inc., and WorldCom, Inc. at 8; Mpower Communications Corp. at 6-7, 10, 13; IP Communications Corporation at 7-9.

<sup>5</sup> At least one CLEC has opted to take advantage of this offering.

It is here that government regulation should pause. Assuring that wireline competitors have non-discriminatory access to such broadband services through resale provides availability without attempting restructure of the technology.

The foregoing approach makes sense for Qwest's CLEC business at this time. Qwest, as a CLEC, is seeking ways to differentiate itself from other competitors, including both the ILEC and other CLECs wherever it seeks to do business. Thus, Qwest's CLEC business is based principally on its own deployment of broadband services and capacity to its customers. We do not believe it would be rational to base our out-of-region business solely on the availability, long-term, of ILEC facilities in the places and at the prices the ILECs establish. This is not to say that Qwest is entirely independent of ILEC facilities. In fact, for our DSL business, we rely on collocation of our equipment at ILEC central offices and use ILEC loops to provide service. Thus, Qwest's CLEC does engage in discussions with ILECs for access to facilities and will continue to do so. Qwest's CLEC is concerned that the time and money invested in collocating DSLAM and other equipment in central offices not be stranded due to fiber in the loop architectures. However, inasmuch as Qwest has no access whatsoever to cable broadband facilities, it is important that alternative broadband technology, to which Qwest does have a claim of competitive access, be deployed promptly and economically.

III. DLC INVESTMENT CAN BE DISRUPTED BY  
APPLICATION OF DISPARATE REGULATION

Qwest's own experience with development of wholesale products for CLECs seeking to offer broadband services in its fourteen-state region, including services affected by the remote deployment of DSLAMs, indicates that such development of technology is being materially impeded by both the reality and the potentiality of intrusive government regulation of these new



investments. Further, our experience is that when government imposes disparate treatment as to competing technologies, customers are encouraged to make uneconomic choices -- choices that the government is then predisposed to support to minimize the predictable adverse consequences.

A. Impairment of Development

While Qwest has current plans for remote DSLAM deployment, it is very important to remember the fundamental economic truth that no prudent investor will invest in something which entails risk when his or her return on the investment is limited by uncertain regulation. New investment in enterprises that entail risk can only be reasonably undertaken when the investor is able to calculate all of the risks and opportunities, and set a price that takes all of these factors into account. No price set by a regulator can duplicate the delicate balancing which must be undertaken prior to making risk-inherent new investment in a competitive marketplace. No matter how wonderful the theoretical benefits that might accrue from a particular structure if it were implemented, these benefits would always remain fanciful if the structure is not implemented.

The point is, when new investment is undertaken which is subject to Section 251(c) of the rules, including both the unbundling and Total Element Long Run Incremental Cost ("TELRIC") pricing principles as well as the "pick-and-choose" rules, the investor is deprived of a key decision point for analysis, and faces the possibility that a regulator will take action directed at that investment which, had that action been known in advance, would have made the investment economically unwise.

B. Disparate Mandates

This fundamental principle was pointed out with force by AT&T when various commentators suggested that AT&T should provide a type of access on its cable modem services

that would have been far less draconian than that imposed today on ILEC DSL services.

AT&T's recent comments on the Commission's Notice of Inquiry on cable Internet access were especially pointed:

Imposing a forced access requirement on cable would plainly discourage investment. Upgrading cable plant and developing and deploying advanced services are expensive and risky ventures. AT&T alone, for instance, has spent billions upgrading its cable system. The imposition of "unbundling" obligations upon cable companies will seriously undermine the industry's incentives to make such upgrades. There would be reduced reasons for cable operators to take the substantial risks associated with the deployment of new facilities and services if, from the first day, they were burdened by onerous and burdensome government regulation that forced them to make the broadband capabilities of their cable plant available to competing Internet service providers that have chosen not to take those risks. The prospect of regulation alone is enough to dampen investment. The prospect of ill-defined and far-reaching regulation would seriously impact investment. As leading investment analysts have told the Commission, "[n]ot only would [regulatory] uncertainty diminish the ability of corporate entities to plan new buildouts, but it would effectively kill the public equity market for financing."<sup>6</sup>

Leaving aside the duplicity of AT&T in advocating this position in a docket involving its cable system while opposing this position in dockets involving ILEC technology, the fact is that one can simply substitute ILEC for AT&T and wireline for cable. If it is true for the development of one competing technology it is likewise true for the development of the other competing technology. With regard to cable, while not actually determining the validity of these arguments, the Commission found that the potential state of competition in the broadband marketplace was sufficiently robust that it declined to place open access conditions on its approval of the AT&T-TCI merger,<sup>7</sup> and only recently opened a Notice of Inquiry docket to

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<sup>6</sup> Comments of AT&T Corp., GN Docket No. 00-185, In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, filed Dec. 1, 2000, at 68-69 (footnotes omitted).

<sup>7</sup> In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. Transferor To AT&T Corp., Transferee, Memorandum Opinion and Order, 14 FCC Rcd. 3160, 3207 ¶ 96 (1999).

examine whether to require such open access.<sup>8</sup> The same regulatory treatment clearly should be afforded to the ILECs' competing DSL technologies. There is no economic or public policy basis for disparate regulatory treatment of those two offerings.

As SBC points out,<sup>9</sup> and as this Commission has recognized on a variety of occasions, ILECs do not have market power in the broadband delivery marketplace.<sup>10</sup> Indeed, ILEC DSL services, including DSL services of CLECs using ILEC facilities, occupy a minority market share. The dominant players in the broadband marketplace, especially the residential and small business marketplace that is the focus of this proceeding, are the cable modem providers.

The record indicates that the Commission recognizes that it has correctly determined the regulatory status of advanced services under the "impairment" test of Section 251(d)(2) of the Act, and that the Commission should not modify its determination that advanced services should not be "unbundled" unless a very strong showing demonstrates that such unbundling is both essential to competition and will not disrupt the deployment of the new technology altogether. In the context of this proceeding and the companion cable access proceeding, the Commission should make clear the following principles:

- Disparate regulation of cable modem service and DSL service is unjustifiable and ultimately destructive.
- Reasonable "open access" rules applied to both cable modem service and DSL service should enable both technologies to develop and give competitors an opportunity to choose between the transport vehicles made available by cable television providers and ILECs.

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<sup>8</sup> In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Notice of Inquiry, 15 FCC Rcd. 19287 (2000).

<sup>9</sup> SBC at 1, 8.

- Rules that increase the deployment costs of new technology or diminish financial rewards will slow ILEC deployment of these new technologies to the detriment of ILECs, CLECs and the public.
- Rules requiring the further unbundling of advanced services contemplated in this docket are unwarranted and could be destructive.
- ILECs and CLECs should be encouraged to work together to develop wholesale services which are both profitable and economically reasonable from the perspective of the ILEC and useful inputs to the CLECs' competitive services. The best way to work towards this result is through a policy that enforces, but does not expand upon, the existing rules.

Respectfully submitted,

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March 13, 2001

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<sup>10</sup> See id. at 9 n.18.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. ON FURTHER NOTICES OF PROPOSED RULEMAKING** to be filed with the FCC via its Electronic Comment Filing System, and (1) a copy of the **REPLY COMMENTS** to be served, via hand delivery on all parties denoted with an asterisk (\*), and (2) a copy of the **REPLY COMMENTS** to be served via United States First Class Mail, postage prepaid, upon all other parties listed on the attached service list.

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March 13, 2001

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